

Services and Intangibles Subcommittee of the South Carolina Taxation Realignment
Commission (TRAC)

Draft Report and Recommendations to Full TRAC

August 10, 2010

Members of the Services and Intangibles Subcommittee of the South Carolina Taxation Realignment Commission (TRAC) are, Burnie Maybank (Chair), Kenneth Cosgrove, Ben Kochenower, Brian Moody, and Jack Shuler.

Key Findings Include

Services:

- There has been a distinct and fundamental shift in the nation's (and South Carolina's) personal consumption patterns that have seen our economy move away from a "goods" based to a "services" based economy.
- As evidence, in 1947, 61 percent of the nation's personal consumption was on tangible goods. By 2007, that percentage had fallen to just 34 percent.¹
- In contrast, services share of personal consumption was just 39 percent in 1947. By 2007, that percentage had grown to 66 percent¹ - a complete, and fundamental, "shift" in economic behavior.
- Similarly, when measured as a share of the State's portion of Gross Domestic Product (GDP), in 1963, services, as a percentage of private industry output, comprised 48 percent, with the goods sector at 52 percent. By 2008, the certainty of the shift noted above was apparent, with services comprising 75 percent and goods falling to 25 percent, a 50 percentage point swing.²
- However, most states, including South Carolina, have failed to adapt their tax structures to this distinct structural shift in economic activity, and as such, impose their state's sales tax on relatively few services. What results is a narrow tax base with a tax rate that is higher than it otherwise would/should be.
- Specifically, in South Carolina, of the 168 services that the Federation of Tax Administrators has identified as taxable, South Carolina taxes 35, or just 20 percent. The national average is 57.³
- The impact of this disparity between economic activity and tax structure is evident. In FY1996-97, almost 50 percent of "gross retail sales" were subject to sales tax in South Carolina. By FY2008-09, that percentage had fallen to just 38 percent - a number that continues to fall.⁴ South Carolina's sales tax base continues to narrow.

- As tax bases narrow, but cost and demand for public services grows (based on population plus inflation), that often creates upward pressure (ie, tax increase) on a state's sales tax rate. In 1969, South Carolina's sales and use tax rate was 3 percent. Today it is 6 percent.⁵
- Such information highlights a structural flaw(s) in South Carolina's sales tax base, which is certainly due, in part, to our shift in economic (both production and consumption) behavior. Direct legislative actions and a growing shift from "brick and mortar" to ecommerce purchases are also responsible for this structural narrowing of the base.
- Tax Fairness. A key component of TRAC's "assessment criteria" adopted by the commission involves tax "equity" (same as fairness) - see TRAC website for the adopted definition.⁶ A broader tax base with few(er) exemptions promotes a fairer system and a lower rate. Taxing additional services also helps to offset, but not alleviate, the otherwise regressive nature of a sales tax structure where few services are generally taxed.⁷

Key Recommendations

Services:

Broadened Tax Base-

- South Carolina must finally recognize this fundamental shift in economic activity and CHANGE its tax structure and/or base accordingly by increasing the number of services that it taxes to a more reasonable level.

Lowered Overall Rate-

- We recommend using 100 percent of any additional revenue that may be generated under this proposal to broaden the base by taxing additional services be used to lower the State sales and use tax rate from its current 6% (one of the nation's higher rates) to a commensurately lower level. This action, in concert with TRAC's recommendations regarding sales and use tax exemptions, have the real opportunity to substantially lower the State's sales tax rate, thereby promoting a fairer, more stable, and more competitive sales tax base and structure.
- As such, the Subcommittee recommends to Full TRAC that it recommend to the General Assembly that it broaden the State's sales tax base (and lower the rate) by adding the attached list of services.

Intangibles:

- In addition, the Subcommittee also recommends taxing additional "intangibles" so as to further broaden the tax base and in response to the changing nature of commerce (eg, software used to be in much greater quantities in "tangible" form, but now of course, much software is "intangible" (and therefore not taxable) in the sense that it is downloaded from one server to another without any "floppy disks" changing hands.). As with services above, any revenue resulting from these recommended changes should be used to further lower the State's sales tax rate. See the attached for the list of intangibles.

Notes:

1 Data compiled by the South Carolina Department of Commerce's Research Division from data from the U.S. Department of Commerce's Bureau of Economic Analysis (US BEA). According to the US BEA, "personal consumption expenditures" is the primary measure of consumer spending on goods and services in the U.S. economy, accounting for roughly two-thirds of "domestic final spending". As such, consumer spending is the primary engine that drives future economic growth. This fact, coupled with the fact that, as noted in the report, there has been a fundamental shift in consumer spending to services and away from goods, creates an imperative for the General Assembly to update the State's tax code to reflect this shift.

2 Gross Domestic Product by State (millions of dollars), as a percentage of private industry output. Data compiled by the South Carolina Department of Commerce's Research Division from data from the U.S. Department of Commerce's Bureau of Economic Analysis (US BEA).

3 2007 Update, released in July 2008, of the Federation of Tax Administrators survey of "Services Taxation".

4 Data from South Carolina Department of Revenue Annual Reports, "Gross and Net Taxable Sales by County". Note: In FY1996-97, 48.12% of gross retail sales were subject to sales tax.

Note: Between FY1999-00 and FY2007-08, gross sales grew by 55% while net taxable sales grew by just 32%. Further illustrating the disparity between gross vs. net taxable sales is the fact that, with little exception, gross sales always grow faster than net taxable sales during periods of economic expansion, but generally speaking, gross sales decline less sharply compared to net taxable sales during periods of contraction. For example, in FY2008-09, gross retail sales fell by 7.15% compared to FY2007-08, while net taxable sales declined by almost 12% during the same period.

5 The State's sales and use tax was first enacted in 1951 at a rate of 3%. It was raised to 4% in 1970, to 5% in 1985 and to 6% in 2007. Source: "South Carolina Revenue Sources and Fiscal Impacts", South Carolina Budget and Control Board, Division of Research and Statistical Services, Office of Economic Research (October 21, 2009).

6 www.scstatehouse.gov/citizensinterestpage/TRAC/093009Meeting/AssessmentCriteria.pdf

7 Conceptual attribution to various reports to include the Institute on Taxation and Economic Policy and Center for Budget and Policy Priorities (Michael Mazerov).

Services:

i) Personal Care:

(1) Salons, Hair Care, and Nail Care Services:

(1) "Beauty salon" or salon means a building or any place, or part of a place or building including, but not limited to, a rental booth, in which cosmetology is performed on the general public for compensation.

(2) "Cosmetology" means engaging in any of these practices or a combination of these practices when done for compensation either directly or indirectly:

(a) arranging, styling, thermal curling, chemical waving, pressing, shampooing, cutting, shaping, chemical bleaching, chemical coloring, chemical relaxing, or similar work, upon the hair, wig, or hairpiece of any person, by any means, with hands or mechanical or electrical apparatus or appliances;

(b) using cosmetic preparations, make-up, antiseptics, lotions, creams, chemical preparations on, or otherwise, or waxing, tweezing, cleansing, stimulating, manipulating, beautifying, or similar work including hair removal, on the scalp, legs, feet, face, neck, arms, hands; or

(c) manicuring or pedicuring the nails of a person or similar work.

(3) "Cosmetologist" means a person including, but not limited to, an independent contractor, not a student, who is licensed to practice cosmetology.

(2) Day Spa Services – Facials, Makeovers, etc

Definition of Facials and Makeovers: The subject of manual, electrical and chemical facials shall include, but is not limited to the following techniques and procedures: Manual Facials including cleansing, scientific manipulations, packs, and masks. Electrical Facials include the use of electrical modalities, dermal lights and electrical apparatus, for facials and skin care purposes; however, machines capable of producing an electrical current shall not be used to stimulate so as to contract, or for the purpose of contracting, the muscles of the body or face. Chemical Facials include chemical skin peels, packs, masks and scrubs.

(3) Exercise Facility Providers

"Physical fitness services" means access to facilities or services for a fee for the development of physical fitness through exercise or weight control. The term includes the facilities and services of health or exercise centers, clubs, studios, or classes; health spas; weight control centers, clinics, or studios; figure salons; tanning centers; and athletic or sport clubs. It does not include rehabilitative therapy administered by a licensed physical therapist.

(4) Massage

(1) "Massage/bodywork therapist" means a person who administers massage/bodywork therapy for compensation.

(2) "Massage/bodywork therapy" means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by

hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

(3) "Massage device" means a mechanical device which mimics or enhances the actions possible by the hands by means of vibration.

(4) "Thermal therapy" means the use of ice or a heat lamp or moist heat on superficial tissues.

(5) Tanning Facilities

(1) "Tanning facility" means a location, place, area, structure, or business or a part of a location, place, area, structure, or business which provides consumers access to tanning equipment for a fee.

(2) "Tanning Equipment" includes ultraviolet or other lamps and equipment containing these lamps, or equipment which disperses of skin coloring chemicals, either of which is intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation or skin coloring chemicals.

(6) Weight Loss Salons and Weight Counselors

Any facility, independent contractor, or individual who charges a fee for individual or group support meetings, the development of personalized weight loss goals and weight loss plans, or manages and supports lifelong life style changes related to a person's body weight.

(7) Piercing:

(1) "Piercing" means the creation of an opening in the body of a human being for a fee by a "facility" or "technician" as defined below so as to create a

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permanent hole for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose, or eyebrow. "Body piercing" for the purpose of this chapter does include piercing an ear lobe with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear lobe.

(2) "Body piercing facility" means any room, space, location, area, structure, or business, or any part of any of these places, where body piercing is practiced or where the business of body piercing is conducted.

(3) "Body piercing technician" means a person who practices body piercing and who meets the requirements of this chapter.

(8) Tattooing

(1) Any "facility" or "artist" as defined below that charges a fee for "Tattoo or tattooing" which means indelibly marking or coloring the skin by subcutaneous introduction of nontoxic dyes or pigments.

(2) "Tattoo or piercing facility or parlor" means any room, space, location, area, structure, or business, or any part of any of these places, where tattooing is practiced or where the business of tattooing is conducted.

(3) "Tattoo artist" means a person who practices body tattooing and who meets the requirements of this chapter.

ii) Photo Finishing

Any person, independent contractor or retail establishment engaged in any of the following acts for a fee; developing camera film of any type, printing photographs

(including photographs in electronic or digital form), recording video or photos (e.g. videographers and photographers) or converting between any of these or similar types of media.

iii) Residential and Commercial Cleaning, Maintenance, and Repairs

(1) Carpets and Floors

(1) The term “carpet” or “floor” includes but is not limited to: cloth from synthetic or natural substances, carpets, rugs, mats, wood paneling, and matting; linoleum, other materials for covering existing floors and wall hangings.

(2) Cleaning of “carpets” or any other type of flooring includes, but is not limited to, the preparation or application manually or by machine for a fee to re-finish, polish, scour, cause abrasive preparations, soap, dye, perfume, lacquer, preserve, resin, or remove soil and or stains or colorings. This provision applies to in home or out of home services.

(2) Windows

(1) The term window includes, but is not limited to an opening constructed in a wall, roof or any other manmade structure that functions to admit light or air to or through an enclosure, and is often framed and spanned with glass mounted to permit opening and closing, or a framework enclosing or encasing a pane of glass (e.g. French or sliding glass doors) for such an opening, or a pane of glass or similar material enclosed in such a framework.

(2) Cleaning of “windows” includes, but is not limited to, the preparation or application manually or by machine for a fee to polish, scour, cause abrasive

preparations, soap, dye, lacquer, preserve, resin, or remove soil, stains, colorings or any other substance.

(3) Commercial Janitorial Services

“Commercial janitorial services” include business entities, individuals, or private contractors who for a fee attend to the maintenance or cleaning of any part of a commercial or industrial building, or any fixture or equipment used or housed by such places.

(4) Furniture and Upholstery Cleaning, Repair and Refinishing

(1) Furniture includes, but is not limited to, the movable articles in a room or an establishment that make it fit for living or working, lighting fixtures, mirrors, picture frames; and other similar articles made of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics

(2) Cleaning, refinishing and reupholstering includes, but is not limited to, the application either manually or by machine for a fee of paints, varnishes, lacquers, preservatives against rust and against deterioration of wood, coloring matters, dyestuffs, resins, metals in foil and powder form for painters and decorators, cloth, stuffing, leather, or other substances commonly used in “furniture” as defined above.

(5) Swimming Pool and Hot Tub Cleaning and Repair

(1) "Swimming Pool" means an artificial structure used to impound water to provide for such recreational uses as bathing, swimming, diving, wading, spraying, sliding, floating, rafting, or other similar usage.

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(2) “Hot Tub” means a tub or pool made of ceramic, acrylic, wood, or another substance and filled with hot or cool water in which one or more bathers may soak, often having jets of warm water that can be directed toward a body part as for therapeutic purposes (e.g. spas, saunas, whirlpools).

(3) Cleaning or maintenance of “swimming pools” and “hot tubs” includes, but is not limited to, the preparation or application manually or by machine for a fee to polish, scour, cause abrasive preparations, soap, dye, lacquer, preserve, resin, seal, sanitize, sustain a desire water quality, or remove soil, stains, colorings or any other substance.

iv) Climate Control System or Infrastructure Maintenance and Repair

“Climate Control Systems and Infrastructure” include any machine, boiler, pump, furnace, or duct system used to heat or cool water, steam, or air, used for heating, ventilating, air conditioning, climate control, thermal comfort, acceptable indoor air quality, humidity control or the maintain pressure relationships between spaces.

“Repair,” “labor,” cleaning and maintenance mean to charge a fee for planning changes or improvements, inspection costs, connection or hookup charges, installation or physical improvements, upgrading, updating, expanding, or replacing existing capital improvements to provide better service or improve the functionality of a tangible good; and costs incurred for construction, reconstruction, system improvements, restoration to original form including design, acquisition, engineering or similar actions applied to a tangible good.

v) Residential and Commercial Property Pest Control and Exterminating

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“Pest Control” includes, but is not limited to, charging any fees for the services or labor involved in eliminating or controlling the presence, growth, or spread of ants, crickets, spiders, cockroaches, rodents, carpet beetles, flies of any type, mosquitoes, stinging and biting pests such as bees, hornets, fleas, ticks, beetles, weevils, or other similar pests. This provision does not apply to property that has been statutorily classified as “agricultural” or “timberland” for property taxation purposes.

vi) Professional Security Systems—consulting, installation, and monitoring

“Professional Security System” includes a physical or virtual method provided for a fee for providing security for physical property and individuals, information, computing systems, financial, human, food, etc. in commercial or residential settings. Examples include burglar alarms, human security or body guards, monitoring equipment or personnel. Any charges other than those collected for sale of equipment for such services will be considered a sale of services.

vii) Commercial Art, Graphic Design, Document Preparation

“Commercial Art, Graphic Design, and Document Preparation” includes the service for a fee of designing print or electronic forms of visual information, as for an advertisement, publication, or website, or preparing similar items in tangible form.

viii) Miscellaneous Repair, Installation, Labor, and Fabrication

“Repair” or “labor” means to charge a fee for planning changes or improvements, inspection costs, connection or hookup charges, installation or physical improvements, upgrading, updating, expanding, or replacing existing capital

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improvements to provide better service or improve the functionality of a tangible good; and costs incurred for construction, reconstruction, system improvements, restoration to original form including design, acquisition, engineering or similar actions applied to a tangible good. This definition applies to all items listed in this section.

ix) Home Appliance Repair

“Home appliances” are electrical/mechanical appliances which accomplish some household function, such as cooking or cleaning. Examples include, but are not limited to, refrigerators, stoves and ovens, vacuums, water softeners, water heaters, water pumps, dish washers, clothing dryers, washing machines, air or water filtration systems, humidifiers, and mechanical garage door opening mechanisms.

(1) Home and commercial entertainment equipment and electronic goods repair

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. Examples of these items include, but are not limited to, televisions, computers, stereos, or radio equipment of any type, cameras, video cameras.

(2) Computer repair, hardware upgrading, maintenance

“Repair and Maintenance” in this section also includes the building or configuring new hardware, installing and updating software packages, and creating and maintaining computer networks. These activities include, but are not limited to,

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physical and investigative processes, including trouble shooting procedures, technical support, data recovery, system administration, or information systems.

“Repair and maintenance” can range from correcting a minor setting that is incorrect, removal of spyware, viruses, and tasks such as replacing hardware or an entire software operating system, installing, uninstalling, or reinstalling various software packages.

“Hardware” refers to units limited to a location (desktops, mainframes and supercomputers) and more portable (laptop and handheld) devices, as well as a range of peripherals, including input devices like keyboards, mice, and scanners, output devices like displays, printers, and speakers, and data storage devices ranging from external hard drives to specialized high-storage desktop computers called servers, networking hardware, including routers, switches, fiber optics, and wireless networks.

“Software” in this section refers to a user's data and settings, data, adjusting one or several settings or preference, or programs designed to execute commands or process data.

(2) Office Equipment

A “photocopier or copier” is a machine that makes paper copies of documents and other visual images quickly and cheaply using heat, Verifax, Photostat, carbon paper, mimeograph machines, and other duplicating machines.

“Communication Equipment” includes communication systems or equipment used for internal or external communication, and examples include intercoms, intercommunication system (a communication system linking different rooms

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within a building or ship, etc) P.A. systems, radio, wireless (a communication system based on broadcasting electromagnetic waves), two-way radio communication system (usually microwave); part of a more extensive telecommunication network, telecom equipment, telecom systems, telecommunication equipment, telecommunication systems (a communication system for communicating at a distance), phone system, communication systems (facility consisting of the physical plants and equipment for disseminating information,” communication equipment, booster amplifiers, booster stations, relay links, relay stations, relay transmitters, boosters (an amplifier for restoring the strength of a transmitted signal), fiber-optic transmission system (communication system using fiber optic cables) infrastructure, a communication system consisting of a group of broadcasting stations that all transmit the same programs, any electronic equipment that receives or transmits radio or tv signals.

(3) Musical Instrument Repair, Tuning, Refinishing, or Refurbishing

“Musical Instrument” means any of various devices or contrivances that can be used to produce musical tones or sounds including wind, string, brass, percussion instruments, or any type of electronic musical device (e.g. keyboards).

(4) Sporting Goods Repair, Maintenance, or Custom Fitting and

Design (e.g., racket re-stringing, bike, gun repair)

“Sporting Goods” includes activity specific equipment or clothing needed to participate in a particular sport and includes but is not limited to mean racquets, hunting weapons or firearms of any type, bikes, golf clubs, balls,

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field or environment set-up equipment or transportation for facilitating participation such as manufactured goals, fencing or boundary setting equipment, or golf carts.

ix) Garment, Jewelry, or Watch Repairs or Changes

Any adjustment, change, modification, restoration, coloring, cleaning, or custom fitting or design of previously made clothing, shoes, jewelry, watches.

x) Storage

(1) Mini-storage

“Storage” means space, or defined “units,” leased or temporarily rented to individuals for a fee, usually used for storing household goods, or to small businesses, usually storing excess inventory or archived records. The rented spaces, commonly known as "units", are commonly, but not necessarily, secured by the tenant's own lock and key.

(2) Climate Controlled Storage

“Climate controlled storage” includes storage facilities as defined above, but also equipment designed to house or store tangible items with the purpose that the facility will control humidity or temperature levels. Similarly, facilities intended to prevent mold or mildew and other moisture problems through other means fall into this category, and other specially tailored facilities for perishable goods such as vegetables, meats, tobacco products, wines, medical products or other chemicals are included.

(3) Marina, Aircraft, and Vehicle Storage and Towing

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“Marina” means a facility which provides mooring or dry storage for watercraft for a fee, or someone commercially engaged in the business of towing or pulling another boat by request for a fee.

“Aircraft Storage” includes the temporary, short-term or long-term housing of aircraft in a traditional aircraft hangar or any other type of man made structure.

“Watercraft” includes any thing used or capable of being used as a means of transportation on the water but does not include: a seaplane regulated by the federal government, water skis, aquaplanes, surfboards, windsurfers, tubes, rafts, and similar devices or any thing that does not meet construction or operational requirements of the state or federal government for watercraft.

“Aircraft” includes any structure, vehicle, or machine designed to travel through air supported by its own buoyancy or by the action of air on its surfaces. It includes airplanes, gliders, helicopters, and balloons.

xi) Transportation or Transport Vehicle Maintenance, Repair, and Towing

“Repair” or “labor” means to charge a fee for waxing, washing, planning changes or improvements, inspection costs, connection or hookup charges, installation or physical improvements, upgrading, updating, expanding, or replacing existing capital or physical improvements to provide better service or improve the functionality of a tangible good; and costs incurred for construction, reconstruction, system improvements, restoration to original form including design, acquisition, engineering or similar actions applied to a tangible good. This definition applies to all items listed in this section.

“Transportation or transport vehicle” includes, automobiles, motorcycles, trucks, limousines, commercial transport trucks, recreational vehicles, watercraft as defined

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above, commercial or military vessels and barges, commercial fishing vessels, railroad cars, locomotives, monorail cars, and the engines or motors that propel them, aircraft as defined above, and their parts.

“Towing” and “ancillary auto services” includes someone commercially engaged in the business of towing, pulling, or loading a vehicle for a fee, and ancillary auto road services such as refueling, battery charging and locksmith services.

xi) Pet Grooming and Pet Care

“Pet Grooming” includes, but is not limiting to activities including preening, hygienic activities (caring for physical appearance), hair or fur trimming.

“Pet Care” involves the kenneling or leaving of an animal in the care of another for a fee.

xii) Publishing and Distribution (newspapers and magazines)

xiii) Taxidermy

“Taxidermy” includes the preparation, stuffing, or mounting the skin of any fish, reptile, amphibian, bird, or mammal for another person for a fee.’

xiv.) Intra-State Transportation

“Intra-State Transportation” includes fees paid directly to a provider or transportation or for a similar voucher (e.g. tickets, tokens, etc) in order to gain transportation by a public or private taxi, bus, limousine, aircraft, or other “transport vehicle” as defined above.

Intangibles:

i) Digital Goods

The major changes in this area regard taxing digital products and downloadable software. Examples of digital products that would be taxed under this proposal include digital books, music and ringtones. The convenience of purchasing and storing digital media will likely continue to grow at an accelerated pace. This growth will also cannibalize traditional sales of tangible books, music media, and off the shelf software. The taxation of digital forms of these goods will ensure that tax revenues keep pace with changes in the mix of sales of digital and tangible media.

ii) Software

Legislation traditionally limited taxable software on to items that were delivered in tangible form. For instance, computer programs or games bought off of shelves at a brick and mortar retailer would have been one of the few forms of taxable software. Software now comes in an array of different forms, including downloadable software directly off of the internet. In addition to taxing downloadable software, sales of custom programmed software would be taxable under this proposal.

iii) Data Processing

Data processing formally means, “the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers.” It also means the electronic transfer of or access to that information. Examples of data processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting and

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sequencing data, and the use of computers to accomplish these tasks. Many of these services have traditionally been exempt. TRAC's proposal seeks to update current legislation to capture revenue from growth in these service areas.

iv) Electricity

Electricity, heating oil and natural gas, as well as other fuels for residential use such as currently receive a full exemption for residential use in South Carolina. TRAC proposes a sales tax rate on electricity, heating oil, natural gas and other energy and heating sources equal to fifty percent of the full sales tax rate imposed by South Carolina. This reduced rate mimics the reduced sales tax rate residents pay in North Carolina (Georgia applies the standard full sales and use tax rate to electricity).

v) Interstate Telephone

Interstate long distance telephone use is currently exempt from sales tax. This proposal seeks to eliminate this sales tax exemption—except for commercial “call centers” with more than two hundred and fifty employees.